

## REMARKS

Reconsideration and further examination of the above-identified application are respectfully requested in view of the amendment and the discussion that follows. Claims 1-30 are pending in this application. The Title, the Drawings and the Specification has been objected to, Claim 13-30 have been rejected under 35 U.S.C. §101 for being directed to non-statutory subject matter. Claims 1, 2, 4, 6-9, 11, 13, 14, 16, 18-21, 23, 25, 26, and 28-30 have been rejected under 35 U.S.C. §102(e) as being anticipated by Eilbacker et al. (U.S. Pat. No. 6,724,887). Claims 3, 15 and 27 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Eilbacker et al. ("Eilbacker"); claims 5 and 17 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Eilbacker in view of Armstrong (U.S. Patent No. 6,356,633; and claims 10, 12, 22 and 24 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Eilbacker in view of Schroeder et al. (U.S. Pat. No. 6,760,727). The title has been amended, and the specification has been amended to add a reference to Internet 16 shown in Fig. 1. Claims 1, 2, 5-7, 13, 14, 17-19, 25, 26 and 28-30 have been amended. After a careful review of the claims and references, it is believed that the claims are in allowable form and a Notice of Allowance is respectfully requested.

The drawings and specification have been objected to because the internet 16 shown in the drawings is not referenced in the specification. This has been corrected by the amendment to the specification which adds a reference to the "internet 16" thereby obviating both objections. The amendment to the specification is not new matter because it is shown in the original Fig. 1 as filed. The title has also been amended as requested by the Examiner. The Examiner has also objected to the drawings with regard to claim 1. The Examiner states that all features of the method claim 1 must be shown in the drawings. However, the patent statute does not require drawings in all instances and the claimed method subject matter is fully described in the specification. Thus, applicant believes that the drawings, title and claims are in compliance with the patent statute and regulations.

The claims 13-30 have been rejected as directed to non-statutory subject matter. Claim 13 was rejected because it is functional descriptive material, and claims 14-22 were rejected because they were dependent on claim 13. However, the claim elements of claim 13 are in means plus function format as authorized by 35 U.S.C. §112(6). This section of the statute

permits apparatus claims reciting only function without structure. Thus, it is believed claim 13 full complies with §101 and §112 and is allowable as are dependent claims 14-22. Claim 25 was rejected as appearing to be implemented in software and claims 26-30 were rejected because they were dependent on claim 25. Claim 25 is directed to apparatus which includes programmed processors. A programmed processor is apparatus not software, and the fact that software may be used as part of a programmed machine does not make the machine non-statutory. Thus, apparatus claims 25-30 are believed to be in allowable form.

Independent claims 1, 13 and 25, as well as dependent claims 2, 4, 6-9, 11, 14, 16, 18-21, 23, 26 and 28-30 have been rejected as anticipated by Eilbacker. Eilbacker is directed to a call center which records and analyzes parameters of telephone calls to determine the customer experience. Eilbacker, however, is focused upon telephone calls and while allowing for email messages, etc., Eilbacker does not deal with the effective duration of data communications. As described in the application at p. 10, merely measuring time of use of the channel for telephone calls is known but asynchronous transactions are dramatically different because of the nature of the transaction. As defined by applicant (in the second paragraph of p 10) asynchronous transactions are data transactions that are for the most part intermittent and in which the data is created first and then transmitted afterward. Thus, it is difficult to determine how long the transaction actually required because the transaction may include exchanges over hours or days while the actual transactions (which may be the result of much effort in, for example, drafting an email) take only very short periods of time (e.g., milliseconds) with long delays in between. Neither Eilbacker nor any of the other references recognize or address this issue at all.

Independent claims 1, 13, and 25 have been amended to clarify that they are directed to asynchronous transactions and further to claim a duration value which reflects effort associated with each transmission (see, e.g., p. 12, second paragraph). These features are neither taught nor suggested by any of the cited references and therefore claims 1, 13 and 25 are believed to be distinguishable over any combination of the cited references. Similarly, claims 2-12, 14-24 and 26-30 are believed to be allowable because they depend from allowable claims 1, 13 and 25. Other dependent claims have also been amended: claim 2 (see, e.g., p. 12, 1<sup>st</sup> full paragraph), claim 6 (see, e.g., p. 12, last four lines), claim 7 (see, e.g., p. 9 1<sup>st</sup> paragraph), claim 14 (see, e.g., p. 12, 1<sup>st</sup> full paragraph), claim 18 (see, e.g., p. 13, 1<sup>st</sup> paragraph), claim 19 (see, e.g., p. 12, 1<sup>st</sup> full paragraph), claim 26 (see, e.g., p. 9, 1<sup>st</sup> paragraph and p. 11, last partial paragraph), claim 29

(see, e.g., p. 13, 1<sup>st</sup> paragraph), and claim 30 (see, e.g., p. 12, last four lines) .

As discussed above, claims 1-30 are in compliance with 35 U.S.C. §101 and are not anticipated or rendered obvious by any combination of the cited references. Therefore, allowance of claims 1-30 is believed to be in order and such action is respectfully requested. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, he is respectfully requested to telephone applicant's undersigned attorney.

Respectfully submitted,  
WELSH & KATZ, LTD.

A handwritten signature in cursive script that reads "James A. Scheer". The signature is written in dark ink and is positioned above the printed name.

By  
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